

TABLE I—§ 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

Statute	Description	New maximum (and minimum, if applicable) penalty amount
31 U.S.C. 1352(c)(1) and (c)(2)(A) .....	Provides for a civil penalty, as set by Congress in 1989, of \$10,000 to \$100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	22,021 to 220,213
31 U.S.C. 3802(a)(1) and (a)(2) .....	Provides for a civil penalty, as set by Congress in 1986, of up to \$5,000 for false claims and statements made to the Government.	12,537

\* \* \* \* \*

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The general authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

\* \* \* \* \*

### § 668.84 [Amended]

■ 4. In § 668.84 amend paragraph (a)(1) introductory text by removing the number “\$59,017” and adding, in its place, the number “\$62,689”.

[FR Doc. 2022–08222 Filed 4–19–22; 8:45 am]

**BILLING CODE 4000–01–P**

## COUNCIL ON ENVIRONMENTAL QUALITY

### 40 CFR Parts 1502, 1507, and 1508

[CEQ–2021–0002]

RIN 0331–AA05

### National Environmental Policy Act Implementing Regulations Revisions

**AGENCY:** Council on Environmental Quality.

**ACTION:** Final rule.

**SUMMARY:** The Council on Environmental Quality (CEQ) issues this final rule to amend certain provisions of its regulations for implementing the National Environmental Policy Act (NEPA), addressing the purpose and need of a proposed action, agency NEPA procedures for implementing CEQ’s NEPA regulations, and the definition of “effects.” The amendments generally restore provisions that were in effect for decades before being modified in 2020.

**DATES:** This rule is effective May 20, 2022.

**ADDRESSES:** CEQ established a docket for this action under docket number

CEQ–2021–0002. All documents in the docket are listed on [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Amy B. Coyle, Deputy General Counsel, 202–395–5750, [Amy.B.Coyle@ceq.eop.gov](mailto:Amy.B.Coyle@ceq.eop.gov).

**SUPPLEMENTARY INFORMATION:** CEQ is issuing this final rule to amend three provisions of its regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, which are set forth in 40 CFR parts 1500 through 1508 (“NEPA regulations” or “CEQ regulations”). First, CEQ is revising 40 CFR 1502.13 on the requirement for a purpose and need statement in an environmental impact statement. The revision clarifies that agencies have discretion to consider a variety of factors when assessing an application for an authorization, removing the requirement that an agency base the purpose and need on the goals of an applicant and the agency’s statutory authority. The final rule also makes a conforming edit to the definition of “reasonable alternatives” in 40 CFR 1508.1(z). Second, CEQ is revising 40 CFR 1507.3 to remove language that could be construed to limit agencies’ flexibility to develop or revise procedures to implement NEPA specific to their programs and functions that may go beyond the CEQ regulatory requirements. Third, CEQ is revising the definition of “effects” in paragraph (g) of 40 CFR 1508.1 to include direct, indirect, and cumulative effects. CEQ is making these changes in order to better align the provisions with CEQ’s extensive experience implementing NEPA and unique perspective on how NEPA can best inform agency decision making, as well as longstanding Federal agency experience and practice, NEPA’s statutory text and purpose to protect and enhance the quality of the human environment, including making decisions informed by science, and case law interpreting NEPA’s requirements.

## I. Background

### A. NEPA Statute

Congress enacted NEPA in 1969 by a unanimous vote in the Senate and a nearly unanimous vote in the House<sup>1</sup> to declare an ambitious and visionary national policy to promote environmental protection for present and future generations. President Nixon signed NEPA into law on January 1, 1970. NEPA seeks to “encourage productive and enjoyable harmony” between humans and the environment, recognizing the “profound impact” of human activity and the “critical importance of restoring and maintaining environmental quality” to the overall welfare of humankind. Furthermore, NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions under which humans and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans. It also recognizes that each person should have the opportunity to enjoy a healthy environment and has a responsibility to contribute to the preservation and enhancement of the environment. 42 U.S.C. 4321, 4331.

NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA’s policies and to give appropriate consideration to environmental values in their decision making. To that end, section 102(2)(C) of NEPA requires Federal agencies to prepare “detailed statements,” referred to as environmental impact statements (EISs), for “every recommendation or

<sup>1</sup> See Linda Luther, Cong. Rsch. Serv., RL33152, The National Environmental Policy Act: Background and Implementation (2008), <https://crsreports.congress.gov/product/details?prodcode=RL33152>.

report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment” and, in doing so, provide opportunities for public participation to help inform agency decision making. 42 U.S.C. 4332(2)(C). The EIS process embodies the understanding that informed decisions are better decisions, and that environmental conditions will improve when decision makers understand and consider environmental impacts. The EIS process also serves to enrich the understanding of the ecological systems and natural resources important to the Nation and helps guide sound decision making, including development, in line with the best available science and data. NEPA also established the Council on Environmental Quality (CEQ) in the Executive Office of the President, which advises the President on environmental policy matters and oversees Federal agencies’ implementation of NEPA. 42 U.S.C. 4342.

In many respects, NEPA was a statute ahead of its time, and it remains relevant and vital today. It codifies the common-sense and fundamental idea of “look before you leap” to guide agency decision making, particularly in complex and consequential areas, because conducting sound environmental analysis before actions are taken reduces conflict and waste in the long run by avoiding unnecessary harms and uninformed decisions. It establishes a framework for agencies to ground decisions in sound science and recognizes that the public may have important ideas and information on how Federal actions can occur in a manner that reduces potential harms and enhances ecological, social, and economic well-being. *See, e.g.*, 42 U.S.C. 4331, 4332(2)(A).

#### B. Regulatory Implementation of NEPA 1970–2020

In 1970, President Nixon issued Executive Order (E.O.) 11514, *Protection and Enhancement of Environmental Quality*, directing CEQ to issue guidelines for implementation of section 102(2)(C) of NEPA.<sup>2</sup> In response, CEQ issued interim guidelines in April 1970, and revised the guidelines in 1971 and 1973.<sup>3</sup> In 1977, President Carter issued E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality*, amending E.O. 11514 and directing CEQ to issue regulations for implementation

of section 102(2)(C) of NEPA and requiring that Federal agencies comply with those regulations.<sup>4</sup> CEQ promulgated its NEPA regulations in 1978.<sup>5</sup> Issued 8 years after NEPA’s enactment, the NEPA regulations reflected CEQ’s interpretation of the statutory text and Congressional intent, expertise developed through issuing and revising the CEQ guidelines and advising Federal agencies on their implementation of NEPA, initial interpretations of the courts, and Federal agency experience implementing NEPA. The 1978 regulations reflected the fundamental principles of informed and science-based decision making, transparency, and public engagement Congress established in NEPA. They directed Federal agencies to issue and update periodically agency-specific implementing procedures to supplement CEQ’s procedures and integrate the NEPA process into the agencies’ specific programs and processes. Consistent with 42 U.S.C. 4332(2)(B), the regulations also required agencies to consult with CEQ in the development or update of these agency-specific procedures to ensure consistency with CEQ’s regulations.

In 1981, CEQ issued the “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,”<sup>6</sup> one of numerous guidance documents CEQ has issued. The “Forty Questions” reflected CEQ’s contemporaneous interpretation of the 1978 regulations and grew out of meetings CEQ held in ten Federal regions to discuss implementation of the CEQ regulations with Federal, state, and local government officials, which identified common questions. The Forty Questions guidance is the most comprehensive guidance CEQ has issued on the 1978 regulations, addressing a broad set of topics from alternatives to tiering. Since its issuance, CEQ has routinely identified the Forty Questions guidance as an invaluable tool for Federal, state, Tribal, and local governments and officials, and members of the public, who have questions about NEPA implementation. Since 1981, CEQ has issued more than 30 additional guidance documents on a range of topics including efficient and coordinated environmental reviews,

mitigation and monitoring, and effects analyses.<sup>7</sup>

CEQ made technical amendments to the 1978 implementing regulations in 1979<sup>8</sup> and amended one provision in 1986 (referred to collectively as 1978 regulations).<sup>9</sup> Otherwise, the regulations were left unchanged for over 40 years. As a result, CEQ and Federal agencies developed extensive experience implementing the 1978 regulations, and a large body of agency practice and case law developed based on them.

#### C. 2020 Amendments to the CEQ Regulations

On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*,<sup>10</sup> directing, in part, CEQ to establish and lead an interagency working group to identify and propose changes to the NEPA regulations.<sup>11</sup> In response, CEQ issued an advanced notice of proposed rulemaking (ANPRM) on June 20, 2018, requesting comment on potential revisions to “update and clarify” the CEQ regulations and including a list of questions on specific aspects of the regulations.<sup>12</sup> CEQ received approximately 12,500 comments.<sup>13</sup>

On January 10, 2020, CEQ published a notice of proposed rulemaking (NPRM) proposing broad revisions to the 1978 NEPA regulations.<sup>14</sup> A wide range of stakeholders submitted more than 1.1 million comments on the proposed rule,<sup>15</sup> including state and local governments, Tribes, environmental advocacy organizations, professional and industry associations, other advocacy or non-profit organizations, businesses, and private citizens. Many commenters provided detailed feedback on the legality, policy wisdom, and potential consequences of the proposed amendments. In keeping with the proposed rule, the final rule, promulgated on July 16, 2020 (“2020 regulations” or “2020 rule”), made

<sup>2</sup> See <https://www.energy.gov/nepa/ceq-guidance-documents> for a list of current CEQ guidance documents.

<sup>3</sup> 44 FR 873 (Jan. 3, 1979).

<sup>4</sup> 51 FR 15618 (Apr. 25, 1986) (amending 40 CFR 1502.22).

<sup>5</sup> 82 FR 40463 (Aug. 24, 2017).

<sup>6</sup> *Id.*, sec. 5(e)(iii).

<sup>7</sup> 83 FR 28591 (June 20, 2018).

<sup>8</sup> The comments are available on [www.regulations.gov](https://www.regulations.gov) under Docket No. CEQ–2018–0001.

<sup>9</sup> 85 FR 1684 (Jan. 10, 2020).

<sup>10</sup> See Docket No. CEQ–2019–0003, <https://www.regulations.gov/document/CEQ-2019-0003-0001>.

<sup>2</sup> 35 FR 4247 (Mar. 7, 1970), sec. 3(h).

<sup>3</sup> See 35 FR 7390 (May 12, 1970) (interim guidelines); 36 FR 7724 (Apr. 23, 1971) (final guidelines); 38 FR 10856 (May 2, 1973) (proposed revisions to the guidelines); 38 FR 20550 (Aug. 1, 1973) (revised guidelines).

<sup>4</sup> 42 FR 26967 (May 25, 1977).

<sup>5</sup> 43 FR 55978 (Nov. 23, 1978).

<sup>6</sup> 46 FR 18026 (Mar. 23, 1981) (“Forty Questions”), <https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>.

wholesale revisions to the regulations; it took effect on September 14, 2020.<sup>16</sup>

In the months that followed the issuance of the 2020 regulations, five lawsuits were filed challenging the 2020 rule.<sup>17</sup> These cases challenge the 2020 rule on a variety of grounds, including under the Administrative Procedure Act (APA), NEPA, and the Endangered Species Act, contending that the rule exceeded CEQ's authority and that the related rulemaking process was procedurally and substantively defective. In response to CEQ and joint motions, the district courts have issued temporary stays in each of these cases, except for *Wild Virginia v. Council on Environmental Quality*, which the district court dismissed without prejudice on June 21, 2021,<sup>18</sup> and is currently on appeal to the U.S. Court of Appeals for the Fourth Circuit.

#### *D. CEQ's Comprehensive Review of the 2020 Regulations*

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,<sup>19</sup> to establish an Administration policy to listen to the science; improve public health and protect our environment; ensure access to clean air and water; limit exposure to dangerous chemicals and pesticides; hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; reduce greenhouse gas emissions; bolster resilience to the impacts of climate change; restore and expand the Nation's treasures and monuments; and prioritize both environmental justice and the creation of well-paying union jobs necessary to achieve these goals.<sup>20</sup> The E.O. calls for Federal agencies to review existing regulations issued between January 20, 2017, and January 20, 2021, for consistency with the policy it articulates and to take appropriate action. The E.O. also revokes E.O. 13807

and directs agencies to promptly take steps to rescind any rules or regulations implementing it. An accompanying White House fact sheet, published on January 20, 2021, specifically directs CEQ to review the 2020 regulations for consistency with E.O. 13990's policy.<sup>21</sup>

On January 27, 2021, the President signed E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, to establish a government-wide approach to the climate crisis by reducing greenhouse gas emissions and an Administration policy to increase climate resilience, transition to a clean-energy economy, address environmental justice and invest in disadvantaged communities, and spur well-paying union jobs and economic growth.<sup>22</sup> E.O. 14008 also requires the Chair of CEQ and the Director of the Office of Management and Budget (OMB) to ensure that Federal permitting decisions consider the effects of greenhouse gas emissions and climate change.<sup>23</sup>

Consistent with E.O. 13990 and E.O. 14008, CEQ is engaged in a comprehensive review of the 2020 regulations to ensure that they provide for sound and efficient environmental review of Federal actions, including those actions integral to tackling the climate crisis, in a manner that enables meaningful public participation, advances environmental justice, respects Tribal sovereignty, protects our Nation's resources, and promotes better environmental and community outcomes. CEQ is taking a phased approach to its comprehensive review, which includes this Phase 1 rulemaking and a planned, more comprehensive Phase 2 rulemaking. Additionally, as a preliminary matter, CEQ issued an interim final rule on June 29, 2021, amending the requirement in 40 CFR 1507.3(b) for agencies to propose changes to existing agency-specific NEPA procedures by September 14,

2021, to make those procedures consistent with the 2020 regulations.<sup>24</sup> CEQ extended the date by 2 years to avoid agencies proposing changes to agency-specific implementing procedures on a tight deadline to conform to regulations that are undergoing extensive review and will likely change in the near future. CEQ requested comments on the interim final rule and received approximately 20 written submissions; summaries and responses to those comments are included in the response to comments document posted to the docket for this rulemaking.

As a next step in the phased approach, CEQ published a proposed rule<sup>25</sup> for the Phase 1 rulemaking on October 7, 2021. In the Phase 1 proposed rule, CEQ identified a discrete set of provisions that pose significant near-term interpretation or implementation challenges for Federal agencies; would have the most impact to agencies' NEPA processes during the interim period before a "Phase 2" rulemaking is complete and make sense to revert to the 1978 regulatory approach. In proposing to revert to language conforming to the approach in the 1978 regulations, the proposed rule addressed issues similar or identical to those the public and Federal agencies recently had the opportunity to consider and comment on during the rulemaking for the 2020 rule.

Publication of the proposed rule initiated a 45-day public comment period that concluded on November 22, 2021. CEQ received approximately 94,458 written comments in response to the proposed rule. Seventy-six comments were shared with CEQ during two virtual public meetings CEQ hosted on the proposed rule on October 19, 2021, and October 21, 2021. In total, CEQ received 94,534 comments on the proposed rule, which CEQ considered in the development of this final rule. A majority of the comments (approximately 93,893) were campaign form letters sent in response to an organized initiative and identical or very similar in form and content. CEQ received approximately 573 unique public comments, of which 362 were substantive comments raising a variety of issues related to the rulemaking approach and contents of the proposed rule. The vast majority of the unique comments expressed some level of support for the proposed rule. Many supportive comments included suggestions for Phase 2 or expressed general support for Phase 1 while also

<sup>16</sup> 85 FR 43304 (July 16, 2020).

<sup>17</sup> *Wild Va. v. Council on Env't Quality*, No. 3:20cv45 (W.D. Va. 2020); *Env't Justice Health All. v. Council on Env't Quality*, No. 1:20cv06143 (S.D.N.Y. 2020); *Alaska Cmty. Action on Toxics v. Council on Env't Quality*, No. 3:20cv5199 (N.D. Cal. 2020); *California v. Council on Env't Quality*, No. 3:20cv06057 (N.D. Cal. 2020); *Iowa Citizens for Cmty. Improvement v. Council on Env't Quality*, No. 1:20cv02715 (D.D.C. 2020). Additionally, in *The Clinch Coalition v. U.S. Forest Service*, No. 2:21cv00003 (W.D. Va. 2020), plaintiffs challenged the U.S. Forest Service's NEPA implementing procedures, which established new categorical exclusions, and, relatedly, the 2020 rule's provisions on categorical exclusions.

<sup>18</sup> *Wild Va. v. Council on Env't Quality*, 544 F. Supp.3d 620 (W.D. Va. 2021) (appeal pending).

<sup>19</sup> 86 FR 7037 (Jan. 25, 2021).

<sup>20</sup> *Id.*, sec. 1.

<sup>21</sup> White House Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

<sup>22</sup> E.O. 14008, 86 FR 7619 (Feb. 1, 2021). E.O. 14008's direction to advance environmental justice reinforces and reflects the policy established in E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, that the Federal Government "pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality." 86 FR 7009 (Jan. 20, 2021).

<sup>23</sup> *Id.*, sec. 213(a); see also sec. 219 directing agencies to make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities.

<sup>24</sup> 86 FR 34154 (June 29, 2021).

<sup>25</sup> 86 FR 55757 (Oct. 7, 2021).

indicating that the commenters would have preferred for CEQ to have proposed more comprehensive changes in Phase 1. CEQ provides a summary of the comments received on the proposed rule and responses to those comment summaries in the document, “National Environmental Policy Act Implementing Regulations Revision Phase 1 Response to Comments” (Phase 1 Response to Comments) and provides below brief summaries of comments and responses related to the provisions in the final rule.

Separately, CEQ is developing a Phase 2 rulemaking to propose comprehensive revisions to the 2020 regulations and intends to issue a second proposed rule for notice and public comment. Both the Phase 1 and Phase 2 rulemakings are intended to ensure that the NEPA process provides for efficient and effective environmental reviews that are guided by science and are consistent with the statute’s text and purpose; enhance clarity and certainty for Federal agencies, project proponents, and the public; inform the public about the potential environmental effects of Federal Government actions and enable full and fair public participation; and ultimately promote better informed Federal decisions that protect and enhance the quality of the human environment and advance environmental, climate change mitigation and resilience, and environmental justice objectives.

#### *E. Public Comments on the Phased Approach*

CEQ received multiple comments related to the phased approach that it has selected to organize its review of the 2020 regulations. Numerous commenters suggested that CEQ set aside the 2020 regulations entirely and reissue the 1978 regulations to serve as a baseline for consideration of further regulatory reforms. These commenters expressed overall support for the content of the Phase 1 proposed rule, but contended that other provisions in the 2020 regulations also pose near-term challenges and also should be revised to revert to the 1978 text. Some of these commenters expressed the view that a full repeal of the 2020 regulations is needed to prevent conflicts between existing agency NEPA procedures and the CEQ regulations. Some commenters also requested that CEQ reissue the 1978 regulations and not pursue additional revisions. CEQ also received many comments expressing support for the Phase 1 rulemaking and encouraging CEQ to quickly initiate and complete a Phase 2 rulemaking. Some of these commenters also identified additional

provisions that the commenters contended Phase 1 should address or provided recommendations for consideration in Phase 2.

Other commenters requested that CEQ pursue one overall rulemaking, rather than a phased approach. These commenters expressed views that one rulemaking has advantages, including enabling stakeholders and the public to understand and comment on the full scope of changes at one time, rather than in two phases. Some of these commenters also expressed concern that the phased approach could result in confusion and inefficiency.

CEQ appreciates the views expressed by commenters on the phased approach and acknowledges that a single rulemaking process would have entailed different tradeoffs and conferred different benefits. However, CEQ considers the phased approach for its review of the 2020 regulations to strike the appropriate balance between the need to act quickly to address critical issues and the need to conduct a thorough review of the 2020 regulations. As explained above, CEQ determined that the phased approach will address important near-term implementation challenges while allowing sufficient time to conduct a thorough review of the 2020 regulations to determine what other changes, including additional reversions to the 1978 regulations and new revisions, may be necessary or appropriate. CEQ decided against proposing a full reversion to the 1978 regulations in Phase 1 to focus time and resources on the most pressing issues and avoid the administrative burdens associated with analyzing each provision in the 2020 regulations, considering whether to revert each provision to the 1978 language and the reasoning for doing so, and responding to comments on the large number of regulatory provisions that would be affected. CEQ is a small agency with limited resources and had concerns about undertaking two large rulemakings—one to revert to the 1978 regulations and a second to propose new updates.

With this final rule, CEQ is concluding Phase 1 and will continue its work on Phase 2. In Phase 2, CEQ will consider the NEPA regulations comprehensively and assess whether to revise additional provisions to revert to the language of the 1978 regulations or to propose other revisions based on its expertise, NEPA’s policies and requirements, relevant case law, and feedback from Federal agencies and the public. Further information on the phased approach can be found in the Phase 1 Response to Comments.

### **III. Summary of and Rationale for Final Rule**

This section summarizes and identifies CEQ’s rationale for the regulatory changes included in the final rule. This section also briefly summarizes and responds to the comments CEQ received in response to the NPRM. CEQ has provided more detailed summaries and responses in the Phase 1 Response to Comments document,<sup>26</sup> which CEQ incorporates by reference and has made available in the docket for this rulemaking.

Many commenters expressed general support for CEQ’s proposal and the general return to the language from the 1978 regulations for the provisions on purpose and need; agency NEPA procedures; and the definition of effects. These commenters stated that the 2020 rule weakened NEPA and that parts of the 2020 regulations were misguided and reflected a bias in favor of project proponents to the possible detriment of environmental values or the public interest. Several of these commenters indicated that the proposed revisions are important for providing clarity, certainty, and consistency.

Commenters who expressed general opposition to the proposed rule were generally supportive of the 2020 regulations. These commenters expressed disappointment about CEQ rescinding portions of the 2020 rule and expressed concerns that the proposed rule would slow down efforts to improve the nation’s infrastructure or harm certain economic sectors. Some of these commenters agreed with the goals that CEQ identified as guiding this rulemaking, but stated that the 2020 rule advanced those goals.

CEQ acknowledges that there is both support for and opposition to the changes outlined in the NPRM, and that there are many additional provisions that commenters suggested CEQ should change in either the Phase 1 rulemaking or in future rulemakings. CEQ is considering these comments as it develops its proposed Phase 2 rule.

This Phase 1 final rule is guided by the extensive experience of CEQ and Federal agencies implementing NEPA for the last 50 years. CEQ is charged with overseeing NEPA implementation across the Federal Government and reviews every agency’s proposed new or

<sup>26</sup> The National Environmental Policy Act Implementing Regulations Revision Phase 1 Response to Comments is available under “Supporting & Related Materials” in the docket on [www.regulations.gov](https://www.regulations.gov) under docket ID CEQ–2021–0002, available at <https://www.regulations.gov/docket/CEQ-2021-0002/document?documentTypes=Supporting%20%26%20Related%20Material>.

updated NEPA implementing procedures. Through this iterative process, CEQ engages with agencies to understand their specific authorities and programs to ensure they integrate consideration of environmental impacts into their decision-making processes. Additionally, CEQ frequently consults with agencies on the efficacy and effectiveness of NEPA implementation. Where necessary or appropriate, CEQ engages with agencies on NEPA reviews for specific projects or project types to provide advice and identify any emerging or cross-cutting issues that would benefit from CEQ issuing formal guidance or assisting with coordination. For example, CEQ has convened interagency working groups to promote efficient and effective environmental reviews for transportation and broadband projects. CEQ also has extensive experience providing written guidance to Federal agencies on a wide range of NEPA-related issues, including environmental justice, emergency actions, climate change, and more.<sup>27</sup> In addition, CEQ meets regularly with external stakeholders to understand their perspectives on the NEPA process. Finally, CEQ coordinates with other Federal agencies and components of the White House on a wide array of environmental issues, such as endangered species consultation or impacts to Federal lands and waters from federally authorized activities.

CEQ relied on this body of experience and expertise in developing this final rule. As discussed in detail in the following sections, CEQ is generally reverting to the approach in the 1978 regulations for these three provisions with non-substantive changes to the 1978 regulatory text to accommodate the current structure of the CEQ regulations. In doing so, CEQ intends for the Phase 1 final rule provisions to have the same meaning as the corresponding provisions in the regulations in effect from 1978 to September 2020.

#### A. Purpose and Need (§ 1502.13)

##### i. Regulatory History and Proposed Changes

The purpose and need section of an EIS identifies the agency's purpose for the proposed action and the need it serves. Developing a statement of the purpose and need is a vital early step in the NEPA process that is foundational to other elements of an EIS. For example, the purpose and need statement informs the range of reasonable alternatives that the agency analyzes and considers.

The 1978 regulations required that each EIS briefly state the underlying purpose and need to which the agency is responding in proposing the alternatives, including the proposed action. 40 CFR 1502.13 (2019). The 2020 regulations modified this requirement by adding specific language to address circumstances in which an agency's "statutory duty" is to consider an application for authorization, such as applications for permits or licenses. In those circumstances, the 2020 regulations require agencies to base the purpose and need on the goals of an applicant and the agency's authority. The 2020 rule added conforming language to a new definition of "reasonable alternatives" in § 1508.1(z). Specifically, the 2020 regulations define "reasonable alternatives" to mean "a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant."<sup>28</sup> In the NPRM for this rulemaking, CEQ proposed to revert to the language of the 1978 regulations in § 1502.13 and make a conforming edit to the definition of "reasonable alternatives" in § 1508.1(z) by deleting the reference to the goals of the applicant from the definition.

##### ii. Summary of NPRM Comments on Purpose and Need

CEQ received comments that both supported and opposed the proposed changes in the NPRM to §§ 1502.13 and 1508.1(z). Some commenters supported the changes in the proposed rule, expressing the view that the changes would result in better decisions because agencies would consider a full range of alternatives and their effects without any arbitrary limitations tied to a project applicant or specific agency authorities. Commenters also expressed the view that the 2020 rule could be interpreted to allow or encourage agencies to prioritize an applicant's goals over the needs and goals of the public or the agency's own goals, and that the proposed rule would remedy these problems. Some commenters also specifically supported the retention of

"technically and economically feasible" in the definition of "reasonable alternatives," stating this is in alignment with previous CEQ guidance on the 1978 regulations. Many commenters agreed with CEQ's statements in the NPRM that the purpose and need statement should reflect understanding of an agency's statutory authority, the public interest, and an applicant's goals but that these should be framed in the context of the general goal of an action and not through an evaluation of whether an applicant can reach its specific goals. Some comments also indicated that the reference to agency authority is redundant and supported the proposed removal of this reference to avoid unnecessary confusion.

Other commenters opposed the proposed changes to §§ 1502.13 and 1508.1(z), contending that the language adopted in the 2020 rule provides clarity that agencies must base the purpose and need on the applicant's goals and agency's statutory authority. Commenters also expressed the view that the 1978 regulation resulted in some Federal agencies prioritizing agency goals over the goals of the applicant, and therefore, that the proposed rule would have the same effect. They further argued that analyses considering alternatives that do not meet an applicant's goals or that cannot be implemented by the applicant or agency are wasteful of both the applicant's and the agency's resources. Commenters also expressed the view that the proposed changes to purpose and need are not required by NEPA. For example, some commenters stated that there is no requirement to consider the public interest when developing a purpose and need statement for a non-Federal project. These commenters also objected to CEQ's statements in the NPRM that the 2020 regulations could be interpreted to require that an applicant's goals be the sole or primary factor for articulating purpose and need. These commenters contended that the 2020 rule's requirement that agencies consider alternatives that the applicant is capable of implementing does not foreclose consideration of potential environmental impacts or public interests. Further, these commenters stated that basing alternatives on the needs of an applicant does not unreasonably narrow the range of alternatives that an agency must consider because agencies still must consider the "no action alternative" and other reasonable alternatives that align with the goals of the applicant. Some commenters who supported retaining the reference to agency statutory

<sup>27</sup> See <https://www.energy.gov/nepa/ceq-guidance-documents> for a list of current CEQ guidance documents.

<sup>28</sup> As noted in the 2020 rule, the definition of "reasonable alternatives" was based in part on CEQ's longstanding guidance, the "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 FR 18026 (Mar. 23, 1981), as amended, 1986, <https://www.energy.gov/sites/default/files/2018/06/f53/G-CEQ-40Questions.pdf>. Specifically, the guidance states in response to Question 2A, "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."

authority agreed with CEQ that the language is confusing, but contended that CEQ should clarify it and that deleting the reference also will create confusion.

The inconsistent interpretations of the language in 40 CFR 1502.13 (2020) expressed by commenters to the NPRM, as well as commenters on the 2020 rule, demonstrate the ambiguity of the language and underscore the need for clarification. Some commenters read the language in the 2020 rule to make the applicant's goals and the agency's statutory authority the sole factors an agency can consider in formulating a purpose and need statement when considering an application for authorization. Other commenters read the language as allowing agencies to consider other, unenumerated factors. These comments demonstrate the ambiguity of the 2020 text, which CEQ is clarifying in this final rule.

CEQ specifically requested comment on the potential effects of the proposed changes to §§ 1502.13 and 1501.8(z) to the environmental review process, including timeframes for environmental review. In response, some commenters indicated they do not believe the proposed changes will affect the average timeline for the environmental review process. Other commenters stated that CEQ's proposed revisions to purpose and need will lead to unnecessarily time-consuming and costly expansions of the consideration of alternatives by agencies with little focus on the project's stated purpose. Some commenters expressed concern that the change to purpose and need would result in additional EISs as opposed to more efficient environmental assessments. CEQ did not receive any specific data or evidence from commenters that would address whether or not the proposed change would have an effect on the environmental review process, including timelines.

### iii. Rationale for Final Rule

In the final rule, CEQ makes the changes as proposed. Specifically, the final rule amends the first sentence in § 1502.13 to require an EIS to state the purpose and need to which the agency is responding in proposing alternatives, including the proposed action. The rule removes the second sentence requiring agencies base the purpose and need on the goals of the applicant and the agency's authority when the agency is reviewing an application for authorization. Finally, the final rule removes the reference to the goals of the applicant from the definition of "reasonable alternatives" in § 1508.1(z).

CEQ makes these changes to address the ambiguity created by the 2020 rule language and ensure agencies have the flexibility to consider a variety of factors in developing the purpose and need statement and are not unnecessarily restricted by misconstruing this language to require agencies to prioritize an applicant's goals over other potentially relevant factors, including effectively carrying out the agency's policies and programs or the public interest. While CEQ does not interpret the 2020 rule language to require agencies to prioritize an applicant's goals above or to the exclusion of other relevant factors, CEQ finds that removing the language on applications for authorization and restoring the 1978 regulatory text is appropriate. The language of the 2020 rule could be misconstrued to inappropriately constrain the discretion of agencies in formulating a purpose and need statement, which would be inconsistent with fully informed decision making and sound environmental analysis. And even if interpreted to merely direct agencies to consider the applicant's goals and the agency's statutory authority alongside other relevant factors, CEQ deems it appropriate to strike the text because it is unnecessary and confusing.

Consistent with longstanding practice and to ensure informed decision making, agencies should have discretion to base the purpose and need for their actions on a variety of factors, which include the goals of the applicant, but not to the exclusion of other factors. Agencies have long considered myriad factors in developing a purpose and need statement. These include the agency's mission and the specifics of the agency decision, including statutory and regulatory requirements. Factors also may include national, agency, or other policy objectives applicable to a proposed action, such as a discretionary grant program targeted to achieve certain policy goals; desired conditions on the landscape or other environmental outcomes; local needs; and an applicant's goals. Additionally, when considering a project sponsored by an outside party, there may be actions by multiple Federal agencies for which the lead agency, in consultation with cooperating agencies, will need to craft the purpose and need statement in a manner to address all of the Federal agency actions (e.g., funding and permits) covered by the NEPA document.

Finally, the goals of the applicant are an important, but not determinative, factor in developing a purpose and need statement for a variety of reasons,

including helping to identify reasonable alternatives that are technically and economically feasible. Both the development of purpose and need statements and the identification of alternatives are governed by a rule of reason; the range of alternatives should be reasonable, practical, and not boundless. This approach is consistent with CEQ's longstanding position as set forth in the Forty Questions issued shortly after the promulgation of the 1978 regulations, where CEQ acknowledged that agencies must consider practicality and feasibility, without relying solely on the applicant's preference for identifying what alternatives are reasonable.<sup>29</sup> Additionally, removing this language does not foreclose an agency from considering the goals of the applicant.

The final rule also removes the reference to the agency's statutory authority from § 1502.13 because it is confusing and unnecessary. Federal agency discussions with CEQ and public comments, as reflected in both the 2020 Rule Response to Comments and the Phase 1 Response to Comments, demonstrate that some interpret this language to limit agencies' discretion in developing the purpose and need statement. The implication that an agency's authority is only relevant when the proposed action is for an authorization, such as a permit or license, is incorrect because an agency's statutory authority for its action is always a relevant consideration for developing a purpose and need statement irrespective of whether the proposed action is an authorization. The 2020 rule's addition of the text also is confusing because it suggested that a change in practice was intended. In fact, agencies have always considered their statutory authority and the scope of the agency decision when developing purpose and need statements. In CEQ's experience implementing the 1978 regulations, there has been little or no confusion among the agencies regarding these issues; therefore, the additional language is unnecessary. Furthermore,

<sup>29</sup> See Forty Questions, 2A, *supra* note 28 ("In determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."). See also *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) ("An agency cannot restrict its analysis to those 'alternative means by which a particular applicant can reach his goals'. . . . The Corps has the 'duty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project.'").

for projects involving multiple agency actions under different statutory authorities, the lead agency should have flexibility in crafting a purpose and need statement to address multiple agency decisions both for efficiency and effective decision making.

CEQ also makes these changes in the final rule because the language added by the 2020 rule may be interpreted in a manner that does not lay the appropriate groundwork for environmentally sound decision making when an agency considers a request for an authorization or reflect the best reading of the NEPA statute or case law. A properly drafted purpose and need statement should lead to consideration of the reasonable alternatives to the proposed action, consistent with NEPA's requirements. *See* 42 U.S.C. 4332(2)(C), 4332(2)(E). CEQ disagrees with commenters' assertions that consideration of alternatives that do not meet an applicant's goals or cannot be implemented by the applicant will always waste applicant or agency resources or result in delays. There may be times when an agency identifies a reasonable range of alternatives that includes alternatives—other than the no action alternative—that are beyond the goals of the applicant or outside the agency's jurisdiction because the agency concludes that they are useful for the agency decision maker and the public to make an informed decision. Always tailoring the purpose and need to an applicant's goals when considering a request for an authorization could prevent an agency from considering alternatives that do not meet an applicant's stated goals, but better meet the policies and requirements set forth in NEPA and the agency's statutory authority and goals. The rule of reason continues to guide decision making in such contexts.

CEQ's concern that the 2020 regulation's change to § 1502.13 may be interpreted to unduly constrain the discretion of agencies leading to the development of unreasonably narrow purpose and need statements is consistent with a similar concern raised by the courts in reviewing agencies' purpose and need statements under the 1978 regulations. It is contrary to NEPA for agencies to “contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence).” *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997) (citing 42 U.S.C. 4332(2)(E)). Constricting the definition of the project's purpose could exclude “truly” reasonable alternatives, making an EIS incompatible with NEPA's

requirements. *Id.* *See also, e.g., Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010) (“Agencies enjoy ‘considerable discretion’ to define the purpose and need of a project. However, ‘an agency cannot define its objectives in unreasonably narrow terms.’” (internal citations omitted)).

Other court decisions have deferred to agencies' purpose and need statements developed under the 1978 regulation that put weight on multiple factors rather than just an applicant's goals, recognizing those factors as appropriately within the scope of the agency's consideration. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991), which the 2020 final rule relied upon as the justification for language added to the purpose and need provision, is consistent with the language in the 1978 regulations that CEQ is restoring, and, in fact, interpreted and applied that language. In that case, in applying the traditional “rule of reason,” the court held that the agency's consideration of the applicant's goals to develop the purpose and need of the action was reasonable. *Id.* at 196–99. However, the court did not require all agencies to make the applicant's goals the sole (or even primary) factor in the formulation of the purpose and need in all factual and legal contexts. *See id.* Returning to the 1978 framework is consistent with case law affirming agency discretion to formulate purpose and need statements based on a variety of relevant factors.

Removing the language regarding an applicant's goals from § 1502.13 does not mean that an agency should consider a boundless set of alternatives. This final rule does not amend language in 40 CFR 1502.14 directing agencies to “[e]valuate reasonable alternatives to the proposed action,” and § 1508.1(z), as amended in this final rule, continues to define “reasonable alternatives” as “a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.” The principle that the range of alternatives should be reasonably related to the purpose and need is well-settled. *See Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004); *Process Gas Consumers Grp. v. U.S. Dep't of Agric.*, 694 F.2d 728, 769 (D.C. Cir. 1981).

The final rule will reduce confusing and unnecessary text and align the regulations more closely to the purposes underlying NEPA. These changes reaffirm agency discretion to identify and consider the factors relevant to formulating statements of purpose and

need in view of the specific circumstances before the agency and the agency's responsibilities, including effectively carrying out agency policies and programs and considering the public interest and the goals of an applicant. CEQ disagrees with the assertions that returning or reaffirming agency discretion to consider multiple factors even where a private applicant is involved will result in significant additional burdens or negatively affect timelines. Agencies have significant experience under the 1978 regulations in considering a variety of factors when crafting purpose and need statements, including an applicant's goals. Furthermore, CEQ did not receive any data, but only general and speculative statements, in response to its specific request for comment on potential effects of the proposed changes to §§ 1502.13 and 1501.8(z) on the environmental review process, including timeframes for environmental review. CEQ notes that it is ultimately for the agency to determine what alternatives are needed to inform its decision making. Exploring and evaluating reasonable alternatives helps decision makers and the public examine other ways to meet the purpose and need of an action, including options with different environmental consequences or mitigation measures, and demonstrate to the public that the agency made an informed decision because it has explored such tradeoffs. CEQ also disagrees with the assertion that the changes to purpose and need in the final rule will directly result in an increase in the number of certain types of environmental review documents like EISs. Development of a purpose and need statement is separate from the assessment of whether a potential effect is significant, and therefore, whether an EIS is required. The changes made in the final rule will ensure agencies can make these determinations based on all relevant factors.

#### B. Agency NEPA Procedures (§ 1507.3)

##### i. Regulatory History and Proposed Changes

The 1978 regulations required Federal agencies to develop NEPA procedures through a notice and comment process to integrate NEPA reviews into their decision-making processes. Over the 40-year period that the 1978 regulations were in place, approximately 85 agencies issued procedures to facilitate agency compliance with NEPA.<sup>30</sup>

<sup>30</sup> A list of agency NEPA procedures is available at [https://ceq.doe.gov/laws-regulations/agency\\_implementing\\_procedures.html](https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html). No agency has updated its procedures to implement the 2020



Agencies have taken a wide range of approaches to their agency-specific NEPA procedures. Some have essentially incorporated the CEQ regulations by reference without much additional detail; others have issued procedures that tailor the NEPA process to the contexts in which they operate and integrate NEPA compliance with the agency's other statutory responsibilities or environmental requirements.<sup>31</sup> Consistent with 42 U.S.C. 4332(2)(B) and 40 CFR 1507.3 (2019), agencies consulted with CEQ in developing agency-specific procedures and CEQ determined that the procedures conformed with NEPA and the CEQ regulations before the agencies issued final procedures.

The 2020 rule amended 40 CFR 1507.3 to include "ceiling provisions" that made the CEQ regulations the maximum requirements agencies could include in their agency NEPA procedures. In adopting the ceiling provisions, the 2020 rule asserted that the ceiling provisions were intended to eliminate inconsistencies among agency-specific procedures and between agency procedures and the CEQ regulations by requiring that the 2020 regulations apply where existing agency NEPA procedures are inconsistent with the CEQ regulations absent a clear and fundamental conflict with another statutory requirement. The 2020 rule also required agencies to propose new or revised procedures within 12 months to eliminate any inconsistencies and prohibited agencies from imposing procedures or requirements additional to the CEQ regulations unless those additional procedures promote agency efficiency or are required by law.

In the Phase 1 NPRM, CEQ proposed to revise § 1507.3(a) and (b) to delete the ceiling provisions to provide that while agency NEPA procedures need to be consistent with the CEQ regulations, agencies have discretion and flexibility to develop procedures beyond the CEQ regulatory requirements, enabling agencies to address their specific programs, statutory mandates, and the contexts in which they operate. Specifically, the NPRM proposed to remove language from § 1507.3(a) stating that where existing agency NEPA procedures are "inconsistent" with the CEQ regulations, the CEQ regulations apply "unless there is a clear and fundamental conflict with the

requirements of another statute." The NPRM did not propose to amend the determination made in the 2020 rule in § 1507.3(a) that categorical exclusions established in agency NEPA procedures as of September 14, 2020, are consistent with the CEQ regulations. The NPRM also proposed to remove from § 1507.3(b) the language requiring agencies "to eliminate any inconsistencies" with the CEQ regulations and the prohibition on agencies imposing additional procedures or requirements beyond the CEQ regulations unless those additional procedures promoted agency efficiency or were required by law. The NPRM did not propose to further amend the requirement for agencies to propose new or revised NEPA procedures within 36 months, by September 14, 2023, as revised in the interim final rule,<sup>32</sup> as well as the encouragement for major subunits of departments to adopt their own procedures with the consent of the department.

#### ii. Summary of NPRM Comments on Agency NEPA Procedures

Many commenters supported the proposed changes to § 1507.3, stating that the 2020 ceiling provisions were unnecessary and unhelpful because agencies should have flexibility to add additional requirements or detail to their NEPA procedures tailored to their unique needs and missions. Commenters also noted that the proposed change would assist agencies during the transition period before the completion of a Phase 2 rulemaking because it clarifies that agencies can and should continue to apply their existing NEPA procedures while CEQ finishes its review of the 2020 rule. They noted that without this change, agencies might be in the position of developing agency procedures that either conflict with NEPA or the 2020 regulations. Many commenters stated that the proposal would restore the ability of Federal agencies to develop agency-specific NEPA procedures to implement NEPA to the "fullest extent possible" consistent with 42 U.S.C. 4332. Some commenters who supported removing the ceiling provision noted that removing the provision may reduce, but will not eliminate, all of the harms of the 2020 rule because the 2020 rule is not being repealed.

Other commenters opposed the proposed changes to § 1507.3 as unnecessary because the 2020

regulations contain language allowing flexibility for agencies to tailor their NEPA procedures to improve efficiency. Some commenters also suggested that CEQ's proposed changes invite agencies to disregard the 2020 rule. Commenters indicated that the NPRM's proposed changes would result in inconsistencies and conflicts among agencies' NEPA procedures, increased litigation, costs, delays, and paperwork, and impede the Administration's goals. Commenters also requested that CEQ provide additional rationale and examples of agency confusion about the 2020 regulations.

Some commenters suggested additional changes CEQ should consider to § 1507.3, including to develop a framework for CEQ review of agency NEPA procedures to ensure agency discretion is not boundless; require agencies to affirm their procedures were reviewed for consistency by CEQ; and require that Federal agencies make revisions to their procedures only with public notice and comment. While such changes are beyond the scope of this rulemaking, CEQ notes that agencies cannot make changes to their NEPA procedures without consulting with CEQ, providing notice and comment, and receiving a determination from CEQ that the proposed changes are consistent with NEPA and the CEQ regulations. See 40 CFR 1507.3(b)(1)–(2). CEQ will consider the ideas included in these comments in the development of its Phase 2 rulemaking.

#### iii. Rationale for Final Rule

The 2020 final rule did not include a detailed rationale for adoption of the "ceiling" provisions, although the 2020 proposed rule stated that they were intended to "prevent agencies from designing additional procedures that will result in increased costs or delays." (85 FR 1693). The 2020 Final Rule Response to Comments Document also stated that "it is important that agencies do not revise their procedures in a way that will impede integration" with other environmental review requirements or "otherwise result in heightened costs or delays."<sup>33</sup> CEQ also asserted in the 2020 Final Rule Response to Comments that it had the authority to place limits on agency procedures pursuant to 42 U.S.C. 4344(3) and E.O. 11991.<sup>34</sup>

CEQ has reexamined the rationales provided for the 2020 rule and the

regulations and, as discussed above, CEQ promulgated an interim final rule to extend the deadline for agencies to propose updates.

<sup>31</sup> Compare the U.S. Department of Agriculture's procedures, 7 CFR part 1b, with NOAA Administrative Order 216–6A and Companion Manual, <https://www.noaa.gov/nepa>.

<sup>32</sup> As noted in part I of the preamble, CEQ revised this time period from 12 months to 36 months in its interim final rule. See 86 FR 34154 (June 29, 2021).

<sup>33</sup> CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments, p. 436 (June 30, 2020), <https://www.regulations.gov/document/CEQ-2019-0003-720629>.

<sup>34</sup> *Id.*



comments received on the Phase 1 NPRM and determined that finalizing the changes as proposed in the Phase 1 NPRM is appropriate. Doing so clarifies that agencies can and should continue to apply their existing NEPA procedures, consistent with the CEQ regulations in effect, while CEQ completes its review of and revisions to the 2020 regulations in its Phase 2 rulemaking. The final rule makes clear that agencies have this discretion by removing the ceiling provisions. The removal of the ceiling provisions allows agencies to exercise their discretion to develop and implement procedures beyond the CEQ regulatory requirements; however, agency procedures cannot conflict with current CEQ regulations. More generally and as discussed further below, these changes to § 1507.3 will promote better decisions, improve environmental and community outcomes, and spur innovation that advances NEPA's goals by giving agencies the flexibility to follow their existing procedures or develop new or revised NEPA procedures that best meet the agencies' statutory missions and enable integration of environmental considerations in their decision making in a flexible manner. Giving agencies the flexibility to innovate should increase the likelihood that agencies identify process improvements and efficiencies that benefit Federal agencies as well as project sponsors and other stakeholders, including the public. CEQ disagrees with the 2020 rule's assertions and some NPRM commenters' contentions that this change will result in increased costs and delays due to conflicts among agency NEPA procedures or between agency NEPA procedures and the CEQ regulations. A primary purpose of the longstanding process by which CEQ engages with agencies in the development of their NEPA procedures is to identify and resolve potential conflicts and ensure that agency-specific procedures conform with the CEQ regulations. Furthermore, the public has an opportunity to provide public comments on proposed agency NEPA procedures before they are finalized. These processes facilitate identification of potential conflicts, costs, or delays and give agencies opportunities to balance various policy and process considerations before establishing or changing their procedures.

The final rule's changes to § 1507.3 also will better achieve NEPA's objectives and statutory requirements. First, while CEQ is responsible for interpreting and overseeing NEPA

implementation, all agencies are charged with administering the statute's requirements. *See* 42 U.S.C. 4332. NEPA expressly instructs agencies to develop methods and procedures in consultation with CEQ to ensure consideration of "environmental amenities and values" in decision making. *See* 42 U.S.C. 4332(2)(B). NEPA and the CEQ regulations, *see* 40 CFR 1507.3, call for agencies to take responsibility for their own procedures, even while consulting with CEQ. Agencies should be allowed to pursue the environmental aims of the statute, including by adopting and carrying out procedures that require additional or more specific environmental analysis than called for by the CEQ regulations. Furthermore, CEQ plays a critical role in reviewing and determining that an agency's NEPA procedures comply with NEPA and the CEQ regulations, which ensures that agency procedures integrate the NEPA process with agency decision making so that the public and decision makers are informed of the environmental consequences of agency decisions. *See* 40 CFR 1507.3(b), (e).

Second, removing these ceiling provisions improves alignment of the NEPA regulations with NEPA's statutory text, which directs agencies to pursue the statute's goals "to the fullest extent possible." 42 U.S.C. 4332. The legislative history of NEPA indicates that the intent behind this statement was to ensure that all Federal agencies comply with NEPA as well as their statutory authorities and that "no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance."<sup>35</sup> This final rule provides agencies the flexibility to comply with NEPA, including by allowing agencies to adopt agency-specific NEPA procedures that align with their unique missions, circumstances, and statutory mandates.

Agencies may more fully pursue NEPA's twin aims to consider environmental effects and inform the public by establishing procedures that provide for additional environmental review and public participation or evaluation of certain issues such as air and water quality impacts, environmental justice considerations, or habitat effects. *See* 42 U.S.C. 4332. Agency procedures could include more specific requirements for the development of environmental assessments to facilitate the decision-making process, such as requiring multiple alternatives or documentation of alternatives considered but

dismissed. For example, the National Oceanic and Atmospheric Administration (NOAA), which, among other things, is responsible for the stewardship of the Nation's ocean resources and their habitat, might adopt agency-specific procedures on the analysis of impacts to species or habitats protected by the Endangered Species Act, the Marine Mammal Protection Act, or the Magnuson-Stevens Fishery Conservation and Management Act, as well as other vulnerable marine and coastal ecosystems. Removing the ceiling provision allows agencies to include such specificity, which can help lead to more effective reviews and provide efficiencies by fostering better integration of NEPA with other statutory requirements.

Third, upon further consideration, CEQ no longer agrees with the assertions in the 2020 Final Rule Response to Comments that setting the CEQ regulations as the ceiling puts agencies in the best position to reduce costs and delays in NEPA implementation, or that doing so will promote integration of NEPA and compliance with other environmental review requirements. The 2020 rule did not provide any support for the assertion that these changes would achieve those goals. It also did not explain why the process laid out in § 1507.3—requiring agencies to collaborate with CEQ on the development of their NEPA procedures, seek public comment on proposed procedures, and obtain CEQ conformity determinations—does not sufficiently advance the goal of ensuring an efficient and effective NEPA review. CEQ has reconsidered the ceiling provisions in light of this longstanding process, CEQ's experience implementing it, and the comments CEQ received on the proposed rule, and determined that the ceiling provisions create unnecessary rigidity in light of other mechanisms to promote consistency and coordination, and reduce costs and delays. CEQ also finds that the processes included in the 1978 regulations effectively promoted the integration of NEPA and other environmental reviews. *See* 40 CFR 1502.25 (2019). CEQ's review of agency procedures allows CEQ and the agency to discuss the rationale for any new or additional procedures or requirements proposed by agencies, and allows CEQ to promote consistency across the Federal Government, as appropriate, without limiting agencies' flexibility to do more than the CEQ regulations describe or otherwise inhibit innovation, including innovation and

<sup>35</sup> H. Rep. No. 91–765, at 9–10 (1969).

flexibilities that can improve agency efficiency.

#### iv. Deadline Extension

As explained in section I.D, CEQ issued an interim final rule in June 2021 that extended by 2 years—to September 14, 2023—the deadline in 40 CFR 1507.3(b) for agencies to propose changes to their existing agency-specific NEPA procedures to make them consistent with the current CEQ regulations. The interim final rule explained that the extension would avoid agencies having to propose changes to their implementing procedures on a tight deadline to conform to regulations that are undergoing extensive review and will likely change in the near future.

The Administrative Procedure Act did not require CEQ to provide notice and an opportunity for public comment prior to extending the deadline. *See, e.g.*, 86 FR 34156. Nevertheless, CEQ requested comments on the interim final rule and received approximately 20 written submissions. CEQ has provided summaries and responses to these comments in the response to comments document posted to the docket for this rulemaking. For the reasons set forth in the interim final rule and the response to comment document, and having now considered public comments, CEQ is finalizing in this rule the deadline extension originally made effective in the interim final rule.

#### C. Definition of “Effects” or “Impacts” (§ 1508.1(g))

##### i. Regulatory History and Proposed Changes

NEPA requires Federal agencies to examine the environmental effects of their proposed actions and alternatives and any adverse environmental effects that cannot be avoided if the proposed action is implemented. 42 U.S.C. 4332(2)(C). The 1978 regulations defined “effects” to include “direct effects” and “indirect effects” and separately defined “cumulative impact.” *See* 40 CFR 1508.7, 1508.8 (2019). Section 1508.8(a) of the 1978 regulations defined “direct effects” as effects “caused by the action and occur at the same time and place.” Section 1508.8(b) of the 1978 regulations defined “indirect effects” as effects “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Section 1508.8 of the 1978 regulations also provided examples of indirect effects and effects generally, and noted that the terms “effects” and “impacts” as used in the regulations were synonymous.

The 1978 regulations defined “cumulative impact” as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* § 1508.7. The definition also stated that cumulative impacts “can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

The 2020 rule made several major changes to these definitions. The 2020 rule provided a single definition for “effects” or “impacts,” deleting the subcategorization of “direct” and “indirect” effects and the definition of “cumulative impacts.” The definition includes introductory text followed by three paragraphs designated (g)(1) through (3). The first clause of the introductory text provides that “[e]ffects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.” The second clause provides that the definition of “effects” or “impacts” includes “those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.” The phrase “those effects that occur at the same time and place as the proposed action or alternatives,” is drawn verbatim from the description of direct effects in the 1978 regulations’ definition of effects. The clause “*may include* effects that are later in time or farther removed in distance,” is a modified version of the language describing indirect effects in the 1978 regulations’ definition of effects; the 2020 rule qualified this description by adding “*may include.*” 40 CFR 1508.1(g) (2020) (emphasis added).

Following the introductory text, paragraph (g)(1) includes language identifying examples of effects, which is modified from the last paragraph of the 1978 definition of “effects.” Paragraph (g)(2) includes new text providing that a “‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA” and that agencies generally should not consider effects “if they are remote in time, geographically remote, or the product of a lengthy causal chain.” This paragraph also explicitly excludes “effects that the agency has no ability to prevent due to its limited statutory authority or would occur

regardless of the proposed action.” Paragraph (g)(3) requires an agency’s analysis of effects to be consistent with the definition of “effects” and explicitly repeals the definition of cumulative impact.

In the NPRM, CEQ proposed to revise the definition of “effects” or “impacts” in § 1508.1(g) to restore the substance of the definitions of “effects” and “cumulative impact” contained in the 1978 regulations. The NPRM also proposed to continue to provide one combined definition for the two terms, rather than reinstating separate definitions for “effects” and “cumulative impacts” as existed in the 1978 regulations, because separate definitions are unnecessary as reflected in the 1978 regulation’s statement that the terms “impacts” and “effects” were synonymous.

The NPRM proposed the following specific amendments to § 1508.1(g). First the NPRM proposed to revise the introductory paragraph in § 1508.1(g) to define “effects” or “impacts” as “changes to the human environment from the proposed action or alternatives” that include “direct effects,” “indirect effects,” and “cumulative effects” as described in § 1508.1(g)(1) through (3), and remove the phrase “that are reasonably foreseeable and have a reasonably close causal relationship.”

Second, the NPRM proposed to revise each of the paragraphs (g)(1) through (3) and add a fourth paragraph (g)(4). Proposed paragraphs (g)(1) through (3) describe “direct effects,” “indirect effects,” and “cumulative effects,” and proposed paragraph (g)(4) provides a list of examples of effects similar to paragraph (g)(1) of the 2020 regulation. The NPRM proposed to move text included in the introductory paragraph of the 2020 regulations, but which originated in the 1978 regulations, into the relevant paragraphs. Specifically, the phrase “effects that occur at the same time and place” would be moved to the description of direct effects in paragraph (g)(1), and the phrase “effects that are later in time or farther removed in distance” would be moved to the description of indirect effects in paragraph (g)(2). The definition of cumulative effects in paragraph (g)(3) is made up of the language defining “cumulative impact” in the 1978 regulations with non-substantive edits for consistency with the current regulations. Paragraph (g)(4) includes proposed amended text from paragraph (g)(1) of the 2020 regulation providing a list of examples of effects. In paragraph (g)(4), the NPRM proposed to restore the language of the 1978 regulations and

delete minor and non-substantive modifications made in the 2020 rule. Following the proposed amendments, the text in paragraph (g)(4) would be identical to the final sentence of the effects definition in the 1978 regulation.

Third, the NPRM proposed to delete in its entirety the text included in paragraph (g)(2) of the 2020 regulations, which states that a “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA; generally excludes from the definition of “effects” those that are remote in time, geographically remote, or the product of a lengthy causal chain; and fully excludes effects that the agency has no ability to prevent due to its limited statutory authority or that would occur regardless of the proposed action.

Fourth, the NPRM proposed to delete in its entirety the text included in paragraph (g)(3) of the 2020 regulations, which requires agencies to analyze effects consistent with the definition of “effects” and explicitly repeals the definition of “cumulative impact” from the 1978 regulations.

Finally, CEQ notes that the NPRM did not propose to include in the definition of “effects” or “impacts” the statement in the 1978 regulations’ definition of “effects” that “[e]ffects and impacts as used in these regulations are synonymous.” See 40 CFR 1508.8(b) (2019). Because the NPRM proposed to continue to provide a single definition for “effects” or “impacts,” including that statement would be unnecessary and redundant.

## ii. Summary of NPRM Comments on the Definition of “Effects”

### General Comments

CEQ received numerous comments on the proposed changes to § 1508.1(g), both expressing support for and opposition to the proposed changes. Many commenters supported the proposed revisions and restoring the concepts of direct, indirect, and cumulative effects or impacts to the regulations. Commenters expressed support for the proposed changes for a variety of reasons, including because the proposed changes better reflect NEPA principles and case law; help ensure the proper scope of analysis that NEPA requires, including analysis of effects on climate change, communities with environmental justice concerns, and wildlife; and provide clarity and consistency for the environmental review process. Many of these commenters identified the changes to the definitions of effects and impacts as the most damaging changes put in place

by the 2020 rule. Some commenters specifically pointed to the importance of considering indirect and cumulative effects for addressing environmental justice concerns and climate change in environmental reviews, consistent with E.O. 13990 and the Administration’s priority to assess and mitigate climate pollution. Commenters also contended that central to an agency considering whether an action will cause or contribute to undue burdens to a community is a review of cumulative impacts resulting from past, present, and reasonably foreseeable future actions and effects in a project area, including the impacts of climate change. Other commenters raised concerns about the 2020 rule’s removal of language on direct, indirect, and cumulative effects and impacts and emphasized the importance of considering these categories of effects on wildlife and other natural resources. Some commenters agreed with the NPRM that the proposed changes will provide clarity to agencies, practitioners, and the public by helping agencies and the public evaluate and understand the full scope of reasonably foreseeable effects in NEPA reviews.

CEQ also received multiple comments expressing overall opposition to the proposed changes. Some commenters raised concerns that restoring the approach to impacts and effects in the 1978 regulations would lead to wider and more complex analysis in the NEPA process, require evaluation of impacts that are outside the scope of the decision, and go beyond the intent of the statute. These commenters stated that the proposed changes to the definition of effects will not improve NEPA compliance or agency certainty. Some commenters expressed the view that the proposed changes will result in undue burden on agencies, increased costs and litigation, and lengthier review times. Some commenters indicated that if CEQ restores the definition of effects in the final rule then the definition should include sideboards or other bounding criteria to prevent misuse, unnecessary delays, and increased costs. These commenters contended that requiring agencies to expend time and resources on analyzing and disclosing speculative effects adds time and cost to the NEPA process without providing value to decision makers or the public. Some commenters expressed concern specifically about the proposed rule’s potential to delay critical infrastructure projects.

As discussed further in section II.C.iii and in the Phase 1 Response to Comments, CEQ has considered the comments in support of and opposed to

the changes to the definition of “effects” in the proposed rule. With respect to the potential impacts to NEPA review timelines, CEQ is not aware of—and commenters did not provide—data supporting the claim that evaluation of direct, indirect, and cumulative effects necessarily leads to longer timelines, especially given the long history of agency and practitioner experience with analyzing these categories of impacts and effects under the 1978 regulations, as well as modern techniques leveraging science and technology to make environmental reviews comprehensive yet efficient.<sup>36</sup> CEQ considers the importance of clear and robust analysis of effects to informed agency decision making to outweigh the speculative potential for shorter NEPA documents or timeframes.

Furthermore, the deletion of the definition of “cumulative impacts” in the 2020 rule did not absolve agencies from evaluating reasonably foreseeable cumulative effects, and therefore, it is unclear that the deletion would narrow the scope of effects analyzed by agencies. Numerous commenters on the NPRM noted that the 2020 rule’s changes to the definition of “effects” created uncertainty and confusion in agencies implementing NEPA. CEQ expects that substantively restoring these definitions, which were in place and in use for decades, will better clarify the effects agencies need to consider in their NEPA analyses and could help avoid delays or deficiencies in NEPA reviews caused by agency uncertainty over the proper scope of effects analysis. Furthermore, conducting a robust consideration of all reasonably foreseeable effects of a proposed action is not a delay; rather, doing so constitutes sound decision making and fulfills NEPA’s statutory mandate. See 42 U.S.C. 4332. Therefore, based on CEQ’s experience and expertise, this final rule strikes the proper balance of promoting informed decision making and completing environmental reviews expeditiously.

CEQ also considered comments regarding the potential for increased litigation. Both commenters in favor of and opposed to the NPRM’s proposal to restore language from the 1978 regulations on direct, indirect, and

<sup>36</sup> For example, CEQ’s NEPA.gov website provides a list of greenhouse gas (GHG) accounting tools, <https://ceq.doe.gov/guidance/ghg-accounting-tools.html>, and the Environmental Protection Agency’s (EPA’s) NEPAassist tool, <https://www.epa.gov/nepa/nepassist>, a web-based application that draws environmental data dynamically from EPA’s Geographic Information System databases and web services and provides immediate screening of environmental assessment indicators for a user-defined area of interest.

cumulative effects raised concerns over increased litigation. CEQ considers the effect of the proposed changes on litigation to be difficult to predict, and therefore not a useful factor in determining the approach for this final rule.

#### Consistency With the NEPA Statute

Some commenters stated that Federal agencies have a statutory obligation to assess all of the relevant environmental effects of their proposed actions and argue that restoring the 1978 definition of “effects” would align the regulations with longstanding agency practice and judicial precedent. Commenters expressed the view that NEPA’s plain language requires Federal agencies to address impacts to future as well as present generations, that this statutory mandate cannot be met without analyzing cumulative and indirect effects, and that courts have consistently affirmed this legal obligation. Other commenters stated that the changes to the definition of effects and impacts made by the 2020 rule are at odds with the statute’s plain language, clear congressional intent, and decades of legal precedent and have created confusion and uncertainty.

Other commenters objected to the proposed rule contending that because NEPA does not include the terms “direct,” “indirect,” or “cumulative” effects, including those terms in the regulations is contrary to the plain language of the statute. Commenters also contended that the 2020 rule’s elimination of those terms and replacement with a simplified definition of “effects” focused on reasonable foreseeability is in better alignment with NEPA’s statutory language, the goals of the statute, and case law.

The restoration of direct, indirect, and cumulative effects as part of the definition of “effects” better reflects NEPA’s statutory purpose, policy, and intent and is more consistent with the case law interpreting NEPA’s requirements. NEPA sets forth a policy to encourage productive and enjoyable harmony between humans and their environment; to promote efforts that will prevent or eliminate damage to the environment and biosphere, and stimulate the health and welfare of people; and to enrich the understanding of the ecological systems and natural resources important to the Nation. 42 U.S.C. 4321. Accordingly, the U.S. Supreme Court has stated that NEPA promotes a “sweeping commitment to ‘prevent or eliminate damage to the environment and biosphere’ by focusing Government and public attention on the environmental effects of proposed

agency action.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989) (citing 42 U.S.C. 4321). The Court explained that NEPA requires agencies to take a “hard look” at the environmental effects of their planned actions, including indirect effects relevant to the dam project at issue in the case, such as potential changes in downstream water temperature that could reduce species survival. *Id.* at 374, 385.

Similarly, courts have long applied the concept of cumulative impacts or effects as identified in the 1978 regulations to NEPA analysis. *See, e.g., NRDC v. Hodel*, 865 F.2d 288, 297–98 (D.C. Cir. 1988) (stating, “NEPA, as interpreted by the courts, and CEQ regulations both require agencies to consider the cumulative impacts of proposed actions,” and holding that NEPA required the Secretary of the Interior to consider the cumulative impacts of offshore development in different areas of the Outer Continental Shelf). Even before CEQ issued regulations defining “effects” to include cumulative effects, the U.S. Supreme Court had interpreted NEPA to require consideration of “cumulative or synergistic environmental impact.” *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976). Although this case focuses on programmatic review, the Court recognized the importance of considering the collective environmental effects of agency actions to inform the decision-making process. *Id.* (“Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.”).<sup>37</sup>

#### Comments on Department of Transportation v. Public Citizen

Some commenters agreed with CEQ’s statements in the NPRM about *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), contending that the 2020 rule’s interpretation of the decision to justify limits on effects analysis was incorrect and that the changes in the Phase 1 proposed rule align with the Supreme Court’s decision. Commenters also expressed the view that the 2020 rule’s reliance on or interpretation of *Public Citizen* to impose a categorical limitation on the scope of effects that agencies may

permissibly analyze was fundamentally misguided because the decision identified the effects that an agency *must* consider, but did not limit the effects that an agency *may* consider. Commenters also expressed the view that the holding in *Public Citizen* is limited to the narrow circumstance in which an agency has no discretion to alter the activity that causes the effects in question. Additional commenters contended that if the Court intended to exclude cumulative effects or impacts from environmental review, the Court would have clearly said so. Based on these interpretations of *Public Citizen*, these commenters generally supported the NPRM’s proposed definition of effects and requested that CEQ clarify that the case applies only in limited circumstances.

Commenters who disagreed with the NPRM’s interpretation of *Public Citizen* contended that the Court stated clearly that NEPA requires a reasonably close causal relationship between the environmental effect and alleged cause and that a “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Commenters also argued that the 2020 rule aligned with *Public Citizen*, because the Court held that consideration of actions beyond an agency’s statutory authority serves no purpose and fails to satisfy NEPA’s rule of reason. Commenters also asserted that the NPRM did not adequately explain CEQ’s change in interpretation of *Public Citizen* in light of the 2020 rule’s heavy reliance upon it.

CEQ has reexamined its interpretation of and reliance on the *Public Citizen* decision in the 2020 rule. The 2020 rule relied upon the decision to provide a broadly applicable statement on effects analysis that is not compelled by the opinion itself and that does not comport with CEQ’s view of the proper scope of effects analysis in line with NEPA’s informational purpose and longstanding agency practice and discretion. At issue in *Public Citizen* was whether the Federal Motor Carrier Safety Administration (FMCSA) had appropriately excluded from its NEPA analysis effects from Mexican trucks entering the United States that would occur if the President followed through on his intention to lift a moratorium on those trucks following FMCSA promulgating vehicle safety regulations. The Supreme Court explained that NEPA and the 1978 regulations are governed by a “rule of reason.” *Id.* at 767. FMCSA had no ability to deny certification if trucks met minimum requirements, and as a result, the Supreme Court held that FMCSA had

<sup>37</sup> See also CEQ’s 1970 interim guidelines, interpreting the requirement in section 102(2)(C)(iv) to mean that “[t]he relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity . . . requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.” 35 FR 7390, 7392 (May 12, 1970) (emphasis added).

lawfully defined the scope of its analysis, and that it was not arbitrary and capricious for FMCSA to exclude from its NEPA analysis effects that would occur if the President lifted the moratorium. *Id.* at 758–59.

In reaching that conclusion, the Court rejected application of “a particularly unyielding variation of ‘but for’ causation, where an agency’s action is considered a cause of an environmental effect even when the agency has no authority to prevent the effect.” *Id.* at 767. The Court stated that “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause.” *Id.* And then it explained that “inherent in NEPA and its implementing regulations is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.” *Id.* It further explained that “it would . . . not satisfy NEPA’s ‘rule of reason’ to require an agency to prepare a full EIS due to the environmental impact of an action it could not refuse to perform. Put another way, the legally relevant cause of the entry of the Mexican trucks is not FMCSA’s action, but instead the actions of the President in lifting the moratorium and those of Congress in granting the President this authority while simultaneously limiting FMCSA’s discretion.” *Id.* at 769.

The 2020 rule quoted the Court’s statement on “but for” causation as a categorical limitation on effects analysis without recognizing the factual and legal context in which the statement was made, including the statements that immediately surrounded it. In fact, the Court tied its analysis of “but for” causation to a “critical feature” of the case—that FMCSA had no statutory authority to stop the process by which the trucks would operate. The Court explained that requiring FMCSA to consider the environmental impacts of those operations as effects of its action would violate the “rule of reason,” because the consideration would not fulfill NEPA’s purpose of informing the decision maker. *See id.* at 768–69. Moreover, the Court affirmed FMCSA’s consideration of effects under the 1978 regulations. *See id.* at 770. The Court did not hold that agencies *may not* consider a broader range of effects in other circumstances. The Court’s focus was on situations “where an agency has no ability to prevent a certain effect due to its limited statutory authority.” *Id.* The 2020 rule could be read to apply universally the proximate causation principle of tort law when determining the scope of their NEPA analyses. This

result is not compelled by the *Public Citizen* decision and is in significant tension with the Supreme Court’s recognition that tort law and NEPA are governed by different principles that serve different policy objectives. *See Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 775, FN 7 (1983). Instead, the Court held that FMCSA’s effects analysis in the specific factual and legal context of its proposed action was reasonable and not arbitrary and capricious.

For these reasons, CEQ has reconsidered its reasoning and approach taken in the 2020 rule and does not deem it useful to include the “reasonably close causal relationship” and “but for” language drawn from *Public Citizen*, which dealt with a unique context in which an agency had no authority to direct or alter an outcome, in the broadly applicable NEPA regulations. Doing so inappropriately transforms a Court holding affirming an agency’s exercise of discretion in a particular factual and legal context into a rule that could be read to limit agency discretion. Instead, as further discussed below, agencies are better guided by the longstanding principle of reasonable foreseeability and the rule of reason in implementing NEPA’s directives.

#### Comments on Reasonably Foreseeable and Reasonably Close Causal Relationship

Some commenters supported the removal of the 2020 language contending that it limits effects analysis to effects that are “reasonably foreseeable and have a reasonably close causal relationship” and because consequential reasonably foreseeable environmental effects may occur remote in time or place from the original action or be the product of a causal chain; for example, toxic releases into air or water and greenhouse gas emissions that contribute to climate change often occur remote in time or place from the original action or are a product of a causal chain. As such, these commenters stated that restoring the definition of effects to the 1978 regulations would provide for more sound decision making. Commenters also stated that the 2020 regulations’ definition of “effects” requiring a close causal relationship potentially narrowed and improperly limited the scope of effects agencies would consider for proposed Federal actions. Commenters specifically pointed to the “but for” language in the 2020 regulations as adding uncertainty and noted that, under the 1978 regulations, agencies shared an understanding of how to assess the

effects of a proposed action based on agency procedures and case law.

On the other hand, commenters opposing changes to the 2020 rule’s definition of “effects” argued that limiting the NEPA analysis to those effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action is in line with common sense and jurisprudence. Others emphasized that the 2020 definition reasonably limits the scope of potential effects analysis and prevents reviews from considering impacts that bear little or no relationship to the proposed action, and therefore improves clarity and relevance of NEPA documents. These commenters asserted that the 2020 rule’s addition of “reasonably foreseeable and reasonably close causal relationship” made a practical clarification that may reduce unnecessary analysis and inefficiencies. Other commenters suggested that, if CEQ reintroduces direct, indirect, and cumulative effects, the rule should clarify that these effects are limited to those that are “reasonably foreseeable.”

CEQ has reexamined the phrase “reasonably close causal relationship,” which the 2020 rule added to the definition of “effects” in part on the basis that consideration of effects should be limited by proximate cause principles from tort law.<sup>38</sup> CEQ now considers this phrase unnecessary and unhelpful because an agency’s ability to exclude effects too attenuated from its actions is adequately addressed by the longstanding principle of reasonable foreseeability that has guided NEPA analysis for decades. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989). *See also Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (citing *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016)). Furthermore, CEQ no longer deems it necessary to import principles of tort law into the NEPA regulations. Environmental review under NEPA serves different purposes, such as guiding sound agency decision making and future planning, that may reasonably entail a different scope of effects analysis than the distinct tort law context. *See Metro. Edison Co.*, 460 U.S. at 775, FN 7 (1983) (“[W]e do not mean to suggest that any cause-effect relation too attenuated to merit damages in a tort suit would also be too attenuated to merit notice in an EIS; nor do we mean to suggest the converse. In the context of both tort law and NEPA, courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal

<sup>38</sup> 85 FR 43304 (July 16, 2020).

changes that may make an actor responsible for an effect and those that do not.”). Keeping the 2020 limitation also would suggest that agency NEPA practitioners are required to apply a tort law legal standard where they would still have to exercise professional judgement in determining the scope of the effects analysis. CEQ is removing the phrase “reasonably close causal relationship” from the definition of “effects”; the definition will continue to include the phrase “reasonably foreseeable” consistent with longstanding interpretation to allow agencies the flexibility to conduct appropriate effects analysis in line with their discretion and NEPA’s requirements.

#### Comments on Potential Phase 2 Changes

CEQ also requested public comments on whether a Phase 2 rulemaking should provide more specificity about the manner in which agencies should analyze certain categories of effects. In response, some commenters suggested that the Phase 2 rulemaking should address how agencies address impacts from climate change and provide more specificity about how agencies analyze environmental justice impacts. Others emphasized that a Phase 2 rule should make the effects analysis more objective and less speculative or provide additional clarification to the definition of effects to produce more effective and focused environmental reviews. Some commenters requested CEQ issue guidance on analysis of effects, and some indicated that guidance might be more efficient than updating the regulations further in a Phase 2 rule. CEQ is considering these comments in the development of its Phase 2 rulemaking and its guidance on assessing greenhouse gas emissions and climate change in environmental reviews.

#### iii. Rationale for Final Rule

The final rule makes the changes proposed in the NPRM with minor modification. The final rule revises the introductory paragraph of § 1508.1(g) defining “effects” and “impacts” as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable.” The NPRM did not include the clause “that are reasonably foreseeable,” but the final rule retains this clause in response to comments. Doing so is consistent with the preamble to the NPRM, which consistently states that direct, indirect, and cumulative effects must be reasonably foreseeable. 86 FR 55765–67. While the NPRM proposed to remove the clause from the definition because

reasonable foreseeability has always been central to defining the scope of effects, after considering comments, CEQ agrees that this clause enhances clarity in line with longstanding agency practice and NEPA case law. Therefore, CEQ has determined to retain this phrase in the final rule.

The final rule otherwise makes the changes as proposed in the NPRM. CEQ is including direct, indirect, and cumulative effects as part of the definition of “effects” or “impacts” to avoid disruption and uncertainty caused by the 2020 rule and clarify that agencies should continue to engage in the context-specific inquiry they have undertaken for more than 40 years to identify reasonably foreseeable effects of a proposed action and its alternatives, providing for sound decision making. The restoration of “cumulative impacts” from the 1978 regulations to include cumulative effects as a component of the definition of “effects” is a non-substantive change, as the 1978 regulations specifically provided that the terms “impacts” and “effects” are synonymous. Agencies should treat cumulative effects under the final rule in the same fashion as they treated cumulative impacts under the 1978 regulations.

As discussed in responding to comments above, restoring language on direct, indirect, and cumulative effects better promotes NEPA’s statutory purposes and is more consistent with the extensive NEPA case law. *See* 42 U.S.C. 4321–4332. Restoring these phrases to the regulations also is consistent with this Administration’s policies to be guided by science and to address environmental protection, climate change, and environmental justice. *See, e.g.,* E.O. 13990<sup>39</sup> and E.O. 14008.<sup>40</sup> Returning to the approach in the 1978 regulations provides regulatory consistency and stability for Federal agencies, affected stakeholders, and the public. CEQ is not returning to these definitions because this is what has always been done, but because longstanding CEQ and Federal agency experience and practice has demonstrated that these interpretations promote the aims of the NEPA statute and are practical to implement. These interpretations also reasonably reflect the plain meaning of the statutory phrase “environmental impact,” and explicitly capture the indirect and cumulative nature of many environmental impacts.

CEQ is including direct, indirect, and cumulative effects as part of the

definition of “effects” or “impacts” because they have long provided an understandable and effective framework for agencies to consider the effects of their proposed actions in a manner that is understandable to NEPA practitioners and the public. CEQ considers this approach to result in a more practical and easily implementable definition than the 2020 rule’s definition of “effects” that explicitly captures the indirect and cumulative nature of many environmental effects, such as greenhouse gas emissions or habitat fragmentation. Upon further evaluation of the rationale for the 2020 rule and the comments CEQ received on the NPRM, CEQ does not consider the tort law standards of “close causal relationship” and “but for” causation to be ones that provide more clarity or predictability for NEPA practitioners, agency decision makers, or the public. Furthermore, as discussed in this section, CEQ does not consider the existing case law interpreting the 1978 definition of “effects” to require that the NEPA regulations limit agency discretion to identify reasonably foreseeable effects under such a standard. CEQ also is removing the potential limitations on consideration of temporally or geographically removed environmental effects, effects that are a product of a lengthy causal chain, and “effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.” These qualifications may unduly limit agency discretion and stating them as categorical rules that limit effects analyses is in tension with NEPA’s directives to produce a detailed statement on the “environmental impact of [a] proposed action,” “any adverse environmental effects which cannot be avoided,” and “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity.” 42 U.S.C. 4332(2)(C). Furthermore, this language could lead Federal agencies to omit from analysis or disclosure critical categories of reasonably foreseeable effects that are temporally or geographically removed, such as climate effects, frustrating NEPA’s core purpose and Congressional intent.

Although the 2020 rule preamble suggested that agencies could continue to consider indirect and cumulative effects,<sup>41</sup> an agency could

<sup>41</sup> In responding to comments about potential effects on threatened and endangered species, the preamble to the 2020 rule explained that “the final rule does not ignore cumulative effects on listed species.” 85 FR 43304 (July 16, 2020). Similarly, the 2020 Final Rule Response to Comments stated that

<sup>39</sup> *Supra* note 19.

<sup>40</sup> *Supra* note 22.

misunderstand the language of the rule to prohibit considering indirect or cumulative effects of their proposed actions given the language in 40 CFR 1508.1(g)(3): “An agency’s analysis of effects shall be consistent with this [definition of effects].” Additionally, the definition included inconsistent directions to agencies—the introductory paragraph stated that effects “may include effects that are later in time or farther removed in distance” but paragraph (g)(2) stated that agencies generally should not consider effects if they are remote in time or geographically remote. CEQ considers the clarification that indirect and cumulative effects are included in the definition of effects critical to ensuring that agency decision makers have a complete view of reasonably foreseeable effects of their proposed actions.<sup>42</sup>

Defining “effects” to include direct, indirect, and cumulative effects will not result in consideration of a limitless universe of effects. The consideration of effects has always been bounded by a reasonableness standard, and, as discussed above, the final rule will retain language on reasonable foreseeability. While CEQ understands the importance of predictability, it is also critical that analyses are complete and scientifically accurate to ensure that decision makers and the public are fully informed.

Including direct and indirect effects in the definition of “effects” ensures that NEPA analyses disclose both adverse and beneficial effects over various timeframes, providing important information to decision makers. For example, a utility-scale solar facility could have short-term direct effects, such as adverse construction and land impacts. The facility also could have long-term indirect beneficial effects, such as reductions in air pollution, including greenhouse gas emissions, from the renewable energy generated by the solar facility that displaces more greenhouse gas-intensive energy sources (such as coal or natural gas) as an electricity source for years or decades into the future. As another example, air pollution, including greenhouse gas

emissions, released by fossil fuel combustion is often a reasonably foreseeable indirect effect of proposed fossil fuel extraction that agencies should evaluate in the NEPA process, even if the pollution is remote in time or geographically remote from a proposed action. An agency decision maker can make a more informed decision about how a proposed action aligns with the agency’s statutory authorities and policies when she has information on the comparative potential air pollution effects and greenhouse gas emissions of the proposed action and alternatives, including the no action alternative. The final rule’s definition of “effects” provides clarity and ensures that agencies disclose such indirect effects.

CEQ also has reevaluated its position on cumulative effects and disagrees with the assertions in the 2020 rule that cumulative effects analyses divert agency resources from analyzing the most significant effects to effects that are irrelevant or inconsequential. Rather, consideration of reasonably foreseeable cumulative effects allows agencies and the public to understand the full scope of potential impacts from a proposed action, including how the incremental impacts of a proposed action contribute to cumulative environmental problems such as air pollution, water pollution, climate change, environmental injustice, and biodiversity loss. Science confirms that cumulative environmental harms, including repeated or frequent exposure to toxic air or water pollution, threaten human and environmental health and pose undue burdens on historically marginalized communities.<sup>43</sup> CEQ does not consider such harms to be inconsequential or irrelevant, but rather critical to sound agency decision making. By restoring the phrase “cumulative effects,” this final rule will make clear that agencies must fully analyze reasonably foreseeable cumulative effects before Federal decisions are made.

CEQ continues to have the goal that environmental reviews should be efficient and effective and will continue to evaluate the NEPA process for opportunities to improve timeliness consistent with NEPA’s purposes. However, CEQ disagrees with the assertion in the 2020 rule that requiring

analysis of reasonably foreseeable cumulative effects causes unacceptably long NEPA processes. CEQ considers the disclosure of all reasonably foreseeable direct, indirect, and cumulative effects to be critical to the informed decision-making process required by NEPA, *see, e.g.*, 42 U.S.C. 4332, such that the benefits of any such disclosure outweigh any potential for shorter NEPA documents or timeframes. Moreover, nothing in this final rule suggests that a well-drafted NEPA document cannot be both concise and supported by thorough analysis. CEQ also disagrees with the 2020 rule’s assertion that deleting reference to direct, indirect, and cumulative effects is necessary because agencies have devoted substantial resources categorizing effects as direct, indirect, or cumulative. 85 FR 43343. Nothing in the CEQ regulations requires agencies to categorize effects separately in this manner; instead, well-organized NEPA documents address the direct, indirect, and cumulative effects of particular resources in a cohesive and comprehensive manner. Agencies may discuss holistically all reasonably foreseeable direct, indirect, and cumulative effects, rather than delineating the categories in separate sections of a NEPA document, to facilitate the decision maker and the public’s comprehensive understanding of the effects of the proposed actions and alternatives.

#### IV. Rulemaking Analyses and Notices

##### A. Executive Order 12866, Regulatory Planning and Review

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules.<sup>44</sup> E.O. 13563 reaffirms the principles of E.O. 12866, calling for improvements in the Federal Government’s regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory objectives.<sup>45</sup> Because this final rule applies to all Federal agencies, it is a significant regulatory action that CEQ submitted to OMB for review. The changes will remove uncertainty created by the 2020 rule to benefit agencies and the public. These changes do not obligate agencies to undertake longer, more complicated analyses. Furthermore, an effective NEPA process can save time and reduce overall project costs by identifying and avoiding problems, including potential

the 2020 rule did not automatically exclude from analysis effects falling within the deleted definition of “cumulative impact[s].” CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments 467 (June 30, 2020), <https://www.regulations.gov/document/CEQ-2019-0003-720629>.

<sup>42</sup> CEQ’s longstanding position has been that cumulative effects analysis is “critical” for the purposes of evaluating project alternatives and developing appropriate mitigation strategies. *See* CEQ GHG guidance at [https://ceq.doe.gov/guidance/ceq\\_guidance\\_nepa-ghg.html](https://ceq.doe.gov/guidance/ceq_guidance_nepa-ghg.html).

<sup>43</sup> *See, e.g., Mercedes A. Bravo et al., Racial Isolation and Exposure to Airborne Particulate Matter and Ozone in Understudied U.S. Populations: Environmental Justice Applications of Downscaled Numerical Model Output*, 92–93 *Env’t Int’l* 247 (2016) (finding that long-term exposure to particulate matter is associated with racial segregation, with more highly segregated areas suffering higher levels of exposure).

<sup>44</sup> 58 FR 51735 (Oct. 4, 1993).

<sup>45</sup> 76 FR 3821 (Jan. 21, 2011).



significant effects, that may occur in later stages of project development.<sup>46</sup> Additionally, if agencies choose to consider additional alternatives and conduct clearer or more robust analyses, such analyses should improve societal outcomes by improving agency decision making. Because individual cases will vary, the magnitude of potential costs and benefits resulting from these proposed changes are difficult to anticipate. Therefore, CEQ has not quantified them. CEQ received a number of comments requesting that it revisit the regulatory impact analysis from the 2020 rule. Because this final rule mainly clarifies provisions,<sup>47</sup> CEQ considers Phase 2 to be the more appropriate rulemaking for any reconsideration of the regulatory impact analysis to the extent Phase 2 proposes substantive changes.

#### *B. Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking*

The Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601 *et seq.*, and E.O. 13272<sup>48</sup> require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare a Regulatory Flexibility Analysis at the proposed and final rule stages unless it determines and certifies that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). An agency need not perform an analysis of small entity impacts when a rule does not directly regulate small entities. *See Mid-Tex Electric Coop., Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985). This final rule does not directly regulate small entities. Rather, it applies to Federal agencies and sets forth the process for their compliance with NEPA. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

<sup>46</sup> See Linda Luther, Cong. Rsch. Serv., R42479, The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress (2012), <https://crsreports.congress.gov/product/pdf/R/R42479>.

<sup>47</sup> While the changes to § 1507.3 are more than clarifying edits, agencies have not revised their NEPA procedures to address changes to the CEQ regulations made by the 2020 rule. Therefore, this change does not have costs and benefits for CEQ to consider.

<sup>48</sup> 67 FR 53461 (Aug. 16, 2002).

#### *C. National Environmental Policy Act*

Under the CEQ regulations, major Federal actions may include regulations. When CEQ issued regulations in 1978, it prepared a “special environmental assessment” for illustrative purposes pursuant to E.O. 11991.<sup>49</sup> The NPRM for the 1978 rule stated “the impacts of procedural regulations of this kind are not susceptible to detailed analysis beyond that set out in the assessment.”<sup>50</sup> Similarly, in 1986, while CEQ stated in the final rule amending its regulations that there were “substantial legal questions as to whether entities within the Executive Office of the President are required to prepare environmental assessments,” it also prepared a special environmental assessment.<sup>51</sup> The special environmental assessment issued in 1986 made a finding of no significant impact, and there was no finding made for the assessment of the 1978 final rule.

CEQ continues to take the position that a NEPA analysis is not required for establishing or updating NEPA procedures. *See Heartwood v. U.S. Forest Serv.*, 230 F.3d 947, 954–55 (7th Cir. 2000) (finding that neither NEPA or the CEQ regulations required the Forest Service to conduct an environmental assessment or an EIS prior to the promulgation of its procedures creating a categorical exclusion). Nevertheless, based on past practice, CEQ developed a special environmental assessment, posted it in the docket, and invited comments. CEQ did not receive any comments, but made minor changes to the special environmental assessment, which CEQ has posted in the docket.

#### *D. Executive Order 13132, Federalism*

E.O. 13132 requires agencies to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.<sup>52</sup> Policies that have federalism implications include regulations that have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not have federalism implications because it applies to Federal agencies, not states. However, CEQ notes that States may elect to assume NEPA responsibilities under Federal statutes. CEQ received

<sup>49</sup> 43 FR 25230 (June 9, 1978).

<sup>50</sup> *Id.* at 25232.

<sup>51</sup> 51 FR 15618, 15619 (Apr. 25, 1986).

<sup>52</sup> 64 FR 43255 (Aug. 10, 1999).

comments in response to the NPRM from a number of States, including those that have assumed NEPA responsibilities, and considered these comments in development of the final rule.

#### *E. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

CEQ acknowledges that it shares a government-to-government relationship with Tribes that differs from its relationship to the general public. E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications.<sup>53</sup> Such policies include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. CEQ has assessed the impact of this final rule on Indian Tribal governments and has determined that the final rule would not significantly or uniquely affect these communities. However, CEQ recognizes the important role Tribes play in the NEPA process and held a government-to-government consultation on the NEPA regulations generally on September 30, 2021. CEQ also held a consultation specifically on the Phase 1 proposed rule on November 12, 2021. CEQ also invited Tribes and Alaska Native Corporations to provide early input on the Phase 2 rulemaking as well as CEQ’s guidance on considering greenhouse gas emissions and climate change in NEPA reviews. In addition to the feedback provided during these consultation sessions, CEQ considered written comments that Tribes submitted during and after the consultations, as well as Tribal comments submitted during the public comment period. CEQ plans to continue to engage in additional government-to-government consultation with federally recognized Tribes and Alaska Native Corporations on its NEPA regulations. During consultation and in written comments, CEQ has received input on areas of importance to Tribes, many of which are around provisions that were not addressed in this Phase 1 rule. CEQ will consider this input for the Phase 2 rulemaking.

<sup>53</sup> 65 FR 67249 (Nov. 9, 2000).

*F. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

E.O. 12898 requires agencies to make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.<sup>54</sup> CEQ has analyzed this final rule and determined that it will not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. This rule sets forth implementing regulations for NEPA for Federal agencies; it is in the agency implementation of NEPA when conducting reviews of proposed agency actions where consideration of environmental justice effects occurs.

*G. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211.<sup>55</sup> CEQ has determined that this rulemaking is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*H. Executive Order 12988, Civil Justice Reform*

Under section 3(a) of E.O. 12988,<sup>56</sup> agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the review required by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

*I. Unfunded Mandate Reform Act*

Section 201 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, requires Federal agencies to assess the effects of their regulatory actions on state, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a state, Tribal, or

local government, in the aggregate, or by the private sector of \$100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on state, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule applies to Federal agencies and will not result in expenditures of \$100 million or more for state, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

*J. Paperwork Reduction Act*

This final rule will not impose any new information collection burden that requires additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Parts 1502, 1507, and 1508**

Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

**Brenda Mallory,**  
*Chair.*

For the reasons discussed in the preamble, the Council on Environmental Quality amends parts 1502, 1507, and 1508 in title 40 of the Code of Federal Regulations as follows:

**PART 1502—ENVIRONMENTAL IMPACT STATEMENT**

- 1. Revise the authority citation for part 1502 to read as follows:

**Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

- 2. Revise § 1502.13 to read as follows:

**§ 1502.13 Purpose and need.**

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

**PART 1507—AGENCY COMPLIANCE**

- 3. Revise the authority citation for part 1507 to read as follows:

**Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

- 4. Amend § 1507.3 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

**§ 1507.3 Agency NEPA procedures.**

(a) The Council has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020, are consistent with this subchapter.

(b) No more than 36 months after September 14, 2020, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures.

\* \* \* \* \*

**PART 1508—DEFINITIONS**

- 5. Revise the authority citation for part 1508 to read as follows:

**Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

- 6. Amend § 1508.1 by revising paragraphs (g) and (z) to read as follows:

**§ 1508.1 Definitions.**

\* \* \* \* \*

(g) *Effects or impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

(1) Direct effects, which are caused by the action and occur at the same time and place.

(2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

<sup>54</sup> 59 FR 7629 (Feb. 16, 1994).

<sup>55</sup> 66 FR 28355 (May 22, 2001).

<sup>56</sup> 61 FR 4729 (Feb. 7, 1996).

(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions

which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

\* \* \* \* \*

(z) *Reasonable alternatives* means a reasonable range of alternatives that are

technically and economically feasible, and meet the purpose and need for the proposed action.

\* \* \* \* \*

[FR Doc. 2022-08288 Filed 4-19-22; 8:45 am]

**BILLING CODE 3325-F2-P**